



4510-29-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

**[Prohibited Transaction Exemption 2018-07;
Exemption Application No. D-11949]**

**Notice of Exemption Involving BNP Paribas S.A. (BNP Paribas)
and its Current and Future Affiliates, and Certain Related
Entities (collectively, the Applicant),
Located in Paris, France**

AGENCY: Employee Benefits Security Administration, U.S.
Department of Labor.

ACTION: Notice of Exemption.

SUMMARY: This document contains a notice of exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). The exemption affects the ability of certain entities with specified relationships to BNP Paribas to continue to rely upon relief provided by Prohibited Transaction Exemption 84-14.

DATES: This exemption is effective for one year from the Conviction Date (Exemption Period).

FOR FURTHER INFORMATION CONTACT: Mrs. Blessed Chuksorji-Keefe of the Department, telephone (202) 693-8567. (This is not a toll-free number.).

SUPPLEMENTARY INFORMATION: On March 22, 2018, the Department published a notice of proposed exemption in the Federal Register at 83 FR 12596, for certain entities with specified relationships to BNP Paribas to continue to rely upon the relief provided by PTE 84-14 for a period of one year,¹ notwithstanding certain criminal convictions, as described herein (the Convictions).

The Department is granting this exemption to ensure that Covered Plans² with assets managed by an asset manager within the corporate family of BNP Paribas may continue to

¹ 49 FR 9494, March 13, 1984, as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005) and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as PTE 84-14 or the QPAM exemption.

² "Covered Plan" is a plan subject to Part 4 of Title 1 of ERISA ("ERISA-covered plan") or a plan subject to section 4975 of the Code ("IRA") with respect to which a BNP Affiliated QPAM relies on PTE 84-14, or with respect to which a BNP Affiliated QPAM (or any BNP Paribas affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the BNP Affiliated QPAM has expressly disclaimed reliance on the QPAM status or PTE 84-14 in entering into its contract, arrangement, or agreement with

benefit from the relief provided by PTE 84-14. This exemption is effective for one year from the Conviction Date (Exemption Period).**3**

No relief from a violation of any other law is provided by this exemption, including any criminal convictions described in the proposed exemption. Furthermore, the Department cautions that the relief in this exemption will terminate immediately if, among other things, an entity within the BNP Paribas corporate structure is convicted of a crime described in Section I(g) of PTE 84-14 (other than the Convictions) during the Exemption Period. The terms of this exemption are designed to promote adherence to basic fiduciary standards under ERISA and the Code. This exemption also aims to ensure that Covered Plans can terminate relationships in an orderly and cost effective fashion in the event the fiduciary of a Covered Plan determines it is prudent to terminate the relationship with a BNP Affiliated QPAM or BNP Related QPAM. The Department

the ERISA-covered plan or IRA.

3 No inference should be drawn from the Department's granting of this one-year exemption that the Department will grant additional relief for BNP Affiliated QPAMs or BNP Related QPAMs to continue to rely on the relief in PTE 84-14 following the end of the one-year period.

notes that its determination that the requisite findings under ERISA section 408(a) have been met is premised on adherence to all of the conditions of the exemption. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are, taken as a whole, necessary for the Department to grant the relief requested by the Applicant. Absent these or similar conditions, the Department would not have granted this exemption.

The individual exemption was requested by the Applicant pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. Accordingly, this exemption is being granted solely by the Department.

Department's Comment

The Department cautions that the relief in this exemption will terminate immediately if an entity within the

BNP Paribas corporate structure is convicted of a crime described in Section I(g) of PTE 84-14 (other than the Convictions) during the Exemption Period. Although BNP Paribas could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the exemption.

WRITTEN COMMENTS

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption, published in the Federal Register at 83 FR 12596 on March 22, 2018. All comments and requests for a hearing were due by March 27, 2018. The Department received written comments from the Applicant. After considering the entire record developed in connection with the Applicant's exemption request, the Department has determined to grant the exemption, with

revisions, as described below.

Comment 1 – Conviction Date and Exemption Period

Section II(j) of the proposed exemption refers to the Conviction Date of BNP Paribas USA as May 30, 2018. Section III(e) of the proposed exemption defines the term “Conviction Date” as the date that a judgment of Conviction against BNP Paribas USA is entered by the District Court in connection with the 2018 Conviction. Further, Section III(g) of the proposed exemption defines the term “Exemption Period” as the period from May 30, 2018 until the earlier of: (1) May 29, 2019; or (2) the date of final agency action made by the Department in connection with a new exemption application submitted by BNP Paribas for the covered transactions described herein.

The Applicant states that it is possible that May 30, 2018 will not be the Conviction Date. The Applicant requests that Section III(e) read as follows:

(e) The term “Conviction Date” means the date that a judgment of conviction against BNP Paribas USA is entered by the District Court in connection with the 2018 Conviction.

In addition, the Applicant requests a corresponding change to the definition of “Exemption Period” in Section III(g), so that Section III(g) read as follows:

(g) The term "Exemption Period" means the period from the Conviction Date until the earlier of: (1) one year from the Conviction Date or (2) the date of final agency action made by the Department in connection with a new exemption application submitted by BNP Paribas for the covered transactions described herein.

The Department concurs with the Applicant's request regarding Section III(e) and has revised the exemption accordingly. In addition, the Department has modified Section III(g) to state that "[t]he term 'Exemption Period' means one year from the Conviction Date.

Comment 2 - Sections II(a) and II(b)

Section II(a) of the proposed exemption states: *"The BNP Affiliated QPAMs and the BNP Related QPAMs (including their officers, directors, agents other than BNP Paribas and BNP Paribas USA, Inc. (BNP Paribas USA)), and employees of such QPAMs and any other party engaged on behalf of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, or participate in: (1) the criminal conduct of BNP Paribas that is the subject of the 2015 Convictions; or (2) the criminal conduct of BNP Paribas USA that is the subject of the 2018 Conviction*

(hereinafter, collectively, the BNP Convictions).

'Participate in' means the knowing approval of the misconduct underlying the BNP Convictions;"

Section II(b) of the proposed exemption states: *"The BNP Affiliated QPAMs and the BNP Related QPAMs (including their officers, directors, agents other than BNP Paribas and BNP Paribas USA, and employees of such QPAMs and any other parties engaged on behalf of such QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the BNP Convictions (the BNP Misconduct);"*

The Applicant states that the phrase "and any other party engaged on behalf of such QPAMs" could encompass any vendor or any entity hired for even the most ministerial or menial non-asset management jobs. Such a reading would be problematic because the Applicant has not identified this universe or done the diligence required to be certain that it can meet this condition. The Applicant requests that the phrase be deleted from both conditions.

The Department does not agree that the phrase "and any other party" has the overly broad scope suggested by the Applicant. The Department notes that the phrase describes

parties who had responsibility for, or exercised authority in connection with, the management of plan assets. Therefore, the Department declines to make the requested change.

However, as clarification, the Department has amended its statement on what it means to "participate in" misconduct to state that: *"For purposes of this exemption, 'participate in' refers not only to active participation in the misconduct underlying the BNP Convictions, but also to knowing approval of that misconduct, or knowledge of such misconduct without taking active steps to prohibit such conduct, such as reporting the conduct to supervisors, including the Board of Directors."*

Comment 3 - Section II(h) (1) (vii)

Section II(h) (1) (vii) of the proposed exemption provides: *"Any violation of, or failure to comply with an item in subparagraphs (ii) through (vi), is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of*

such failure to so correct, in writing. Such report shall be made to the head of compliance and the General Counsel (or their functional equivalent) of the relevant BNP Affiliated QPAM that engaged in the violation or failure, and, the independent auditor responsible for reviewing compliance with the Policies, and a fiduciary of any affected Covered Plan where such fiduciary is independent of BNP."

The Applicant represents that this condition is unclear and states that the "Department removed the requirement to notify the plan fiduciary in the QPAM exemptions granted at the end of December 2017, and the preamble does not explain whether or why the Department deemed it important to reinstate the requirement here." The Department notes that the provision at issue was set forth in PTE 2015-06,⁴ the earlier BNP Paribas exemption. At no time prior to publication of PTE 2015-06 did the Applicant represent that the provision was not clear and since PTE 2015-06 was granted the Applicant has had to comply with that provision.

⁴ 80 FR 20261 (April 15, 2015). PTE 2015-06 is an exemption in respect of Exemption Application D-11863 that permits BNP Affiliated QPAMs to rely on the exemptive relief provided by

Further, whether or not the provision is included in another exemption is not a persuasive reason for removing it from this exemption which is developed based on the facts and representations in this application. The Department declines to revise Section II(h)(1)(vii) as requested.

Comments 4 and 5 - Clarifications to Proposed Exemption

See discussion in "Other Comments" section of this grant notice.

Comment 6 - Section II(i)(1)

Section II(i)(1) of the proposed one-year temporary exemption requires, in relevant part: *"Each BNP Affiliated QPAM submits to an audit conducted by an independent auditor" and the "audit must cover the Exemption Period and must be completed no later than six (6) months after the end of the Exemption Period."*

The Applicant requests that the "initial audit under this exemption cover the period from October 16, 2018 through the end of the first year after the Conviction

PTE 84-14, notwithstanding the 2015 Convictions.

Date.”

The Department declines to make the requested revision. The Department has concluded that this exemption is adequately protective of Covered Plans only to the extent that, among other things, each BNP Affiliated QPAM remains subject to an in-depth audit performed by a qualified independent auditor during the entire period of time covered by this exemption. The audit required by PTE 2015-06 covers a period of time that ends on the day before the 2018 BNP Conviction Date, which may be on around May 30, 2018. However, the revision sought by the Applicant raises the possibility that the BNP Affiliated QPAMs would not be subject to an audit until October 16, 2018, which would be an unacceptably long gap between audit periods. In order to ensure that each BNP Affiliated QPAM remains continuously subject to an in-depth audit throughout the entire term of this exemption, the audit required herein covers a period of time that begins on the 2018 BNP Conviction Date.

The Department has revised the term “2014 Convictions” to be the defined term “2015 Convictions” as it appears in Footnote 14, as numbered in the proposed one-year temporary exemption, in Section II(i)(1).

Comment 7 – Section II(i) (5) (i)

Section II(i) (5) of the proposed one-year temporary exemption states, in relevant part: “[f]or the audit, on or before the end of the relevant period described in Section I(i) (1) for completing the audit, the auditor must issue a written report (the Audit Report) . . . [t]he Audit Report must include the auditor’s specific determinations regarding: (i) [t]he adequacy of each BNP Affiliated QPAM’s Policies and Training . . . The BNP Affiliated QPAM must promptly address or prepare a written plan of action to address any determination of inadequacy by the auditor regarding the adequacy of the Policies and Training. . . .”

The Applicant requests that the phrase “any determination of inadequacy by the auditor regarding the adequacy of the Policies and Training” be revised to read “any determination by the auditor regarding the adequacy of the Policies and Training.” The Department modified Section II(i) (5) (i) as requested by the Applicant.

Additionally, the Department has re-designated the references to “Section I(i) (1)”, “Section I(h)”, “Section I(i) (7)”, “Section I(m)”, and “Section I(i) (3) and (4)” found in Section II(i) (5) as “Section II(i) (1)”, “Section

II(h)", "Section II(i)(7)", "Section II(m)", and "Section II(i)(3) and (4)."

Comment 8 – Section II(i)(7)

Section II(i)(7) of the proposed exemption states, in relevant part: *"With respect to the Audit Report, the General Counsel, or one of the three most senior executive officers of the BNP Affiliated QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that, such BNP Affiliated QPAM has addressed, corrected, remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report."*

The Applicant requests that the requirements of Section II(i)(7) be modified to take into account BNP Paribas' business structure by providing that an executive related to an asset/investment management line of business operating through the BNP Affiliated QPAM review and certify the Audit Report. In this regard, the Applicant requests Section II(i)(7) be revised in part as follows: "[w]ith respect to

the Audit Report the General Counsel or one of the three most senior executives of the line of business engaged in discretionary asset management activities through the BNP Affiliated QPAM with respect to which the Audit Report applies, must certify in writing, under penalties of perjury, that the officer has reviewed the Audit Report and this exemption. . . ."

The Department concurs that a senior executive officer with knowledge of the asset management line of business within the BNP Affiliated QPAM should review and certify the Audit Report, and has modified the language of Section II(i)(7), accordingly. The Department also made certain clarifying grammar edits.

Comment 9 - Section II(i)(8)

Section II(i)(8) of the proposed exemption provides that: *"The Risk Committee of BNP's Board of Directors is provided a copy of the Audit Report; and a senior executive officer of BNP must review the Audit Report for each BNP Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed the Audit Report."*

The Applicant requests the Audit Report be submitted to the Board of Directors of BNP Paribas USA, Inc., the intermediate holding company (IHC) of BNP Paribas, S.A. The Applicant states that BNP Paribas USA, Inc. as an IHC and a financial holding company is registered with and supervised by the Board of Governors of the Federal Reserve System. Furthermore, the Applicant represents that BNP Paribas USA, Inc.'s Board of Directors is familiar with the operations of the BNP Affiliated QPAMs and U.S. law. Lastly, the Applicant requests that Section II(i)(8) not reference the risk committee and allow the BNP Paribas USA, Inc.'s Board of Directors to determine which committee should receive the Audit Report.

The Department has developed this exemption to ensure that the highest levels of BNP management are aware of on-going matters concerning BNP Paribas, the BNP Affiliated QPAMs, and compliance with this exemption. In the Department's view, as the parent company, BNP Paribas' Board of Directors is in the best position to ensure that any inadequacy identified by the auditor is appropriately addressed and that changes to corporate policy are effectuated if and where necessary. Requiring that the Audit

Report be submitted to the Board of Directors of BNP Paribas provides assurance that the highest levels of management within BNP Paribas stay informed about BNP Paribas' and the BNP Affiliated QPAMs' compliance with the terms of this exemption. Accordingly, the Department declines to change the entity to which the Audit Report is submitted under Section II(i)(8) and in light of the importance of ensuring proper review of the Audit Report, the Department declines to alter this provision to permit BNP Paribas' Board of Directors to decide, in its discretion, which committee receives the Audit Report. To clarify that the entity receiving the Audit Report is the Board of Directors of BNP Paribas, S.A., the parent entity, the term "BNP" in Section II(i)(8) has been revised to be the defined term "BNP Paribas."

Likewise, in Sections II(h)(1)(vii), II(i)(2), II(i)(5), II(i)(8), and II(i)(12) of this grant notice, the Department has revised the term "BNP" to be the defined term "BNP Paribas" to clarify the original intent of the Department to reference BNP Paribas, S.A.

Comment 10 – Section II(j) (2)

Section II(j) (2) of the proposed exemption provides:
"As of May 30, 2018 and throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a BNP Affiliated QPAM and a Covered Plan, the BNP Affiliated QPAM agrees and warrants to Covered Plans: . . .
(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from: a BNP Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; or any claim arising out of the failure of such BNP Affiliated QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14 other than the BNP Convictions. This condition applies only to actual losses caused by the BNP Affiliated QPAM's violations."

The Applicant states that BNP Affiliated QPAMs with several lines of businesses may have many contracts with Covered Plans. Accordingly, the Applicant requests that the condition be limited to breaches of an investment management contract between the BNP Affiliated QPAM and the Covered

Plan.

The Department declines to make the requested revision to this condition. The purpose of this indemnification provision is to protect Covered Plans with respect to its interactions with the BNP Affiliated QPAMs. The Department believes that limiting the scope of indemnification to investment management contracts unnecessarily narrows the protection of Covered Plans from damages within the control of the BNP Affiliated QPAMs.

Comment 11 - Section II(j) (7)

Section II(j) (7) of the proposed exemption provides that: (7) "*[Six months from the Conviction Date], each BNP Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For prospective Covered Plans that enter into a written asset or investment management agreement with a BNP Affiliated QPAM on or [six months after the Conviction Date], the BNP Affiliated QPAM will agree to its obligations under this Section I(j) in an updated investment management agreement between the BNP Affiliated QPAM and such clients or other written contractual agreement.*"

The Applicant states that a bilateral management agreement containing the obligations under Section II(j) should not be mandated. The Applicant states that the BNP Affiliated QPAM would be in violation of this condition if a client refuses to sign the updated agreement, even if the BNP Affiliated QPAM met the substantive requirements of Section II(j). Accordingly, the Applicant requests that the Department modify the condition so that the BNP Affiliated QPAM may satisfy the condition irrespective of whether the Plan or IRA client signs the updated investment management agreement.

The Department has added the following to Section II(j)(7): "Notwithstanding the above, a BNP Affiliated QPAM will not violate the condition solely because a Plan or IRA refuses to sign an updated investment management agreement." The Department also revised the condition to reflect that May 30, 2018 may not be the Conviction Date.

Comment 12 - Section II(j)(4)

Section II(j)(4) of the proposed exemption states that:
"As of May 30, 2018 and throughout the Exemption Period, with respect to any arrangement, agreement, or contract

between a BNP Affiliated QPAM and a Covered Plan, the BNP Affiliated QPAM agrees and warrants to Covered Plans: . . ."

(4) Not to restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the BNP Affiliated QPAM with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and be effective no longer than reasonably necessary to avoid the adverse consequences;. . ."

The Applicant represents that Section II(j)(4) omits the following language: ". . . with respect to any investment in a separately managed account or pooled fund

subject to ERISA and managed by such QPAM. . .” The Applicant represents that this language is from recent prior QPAM Section I(g) exemptions that made it clear that the QPAMs were not to restrict a Covered Plan’s ability to terminate or withdraw from its asset management relationship, either through a separate account or pooled fund. The language as written in the proposed exemption would apply to non-asset management mandates between the QPAMs and the Covered Plan. Therefore, the Applicant requests the same clarification made in the QPAM exemptions granted at the end of December 2017.

The Department concurs with the Applicant’s request and has revised the exemption accordingly.

Comment 13 – Section II(k)

Section II(k) of the proposed exemption states: “By July 29, 2018, each BNP Affiliated QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Convictions (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) (collectively, Initial Notice) that the BNP Convictions

result in a failure to meet a condition in PTE 84-14, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a BNP Affiliated QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests, and to each entity that may be a BNP Related QPAM. Effective as of the date of the Initial Notice, all prospective Covered Plan clients that enter into a written asset or investment management agreement with a BNP Affiliated QPAM must receive a copy of the exemption, the Summary, and the Statement prior to, or contemporaneously with, the Covered Plan's receipt of a written asset management agreement from the BNP Affiliated QPAM. Disclosures may be delivered electronically; . . ."

The Applicant represents that Section II(k) provides that "Effective as of the date of the Initial Notice, all prospective Covered Plan clients that enter into a written asset or investment management agreement with a BNP Affiliated QPAM must receive" the notice required under Section II(k). The Applicant states that because "the Initial Notice likely will be provided over a period of time between the Conviction Date and July 29, 2018, the Applicant

requests clarification that the notice provision with respect to prospective Covered Plan clients is effective two months after the Conviction Date."

The Department concurs with the Applicant's request, and has revised Section II(k) to read: "Effective as of the date that is 60 days after the Conviction Date, all Covered Plan clients that enter into a written asset or investment management agreement with a BNP Affiliated QPAM after that date must receive. . . ."

Comment 14 - Section II(m) (1) (ii)

Section II(m) (1) (ii) of the proposed exemption provides: With respect to the Compliance Officer, the following conditions must be met. . . ."*(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of legal compliance for asset management; . . .*"

The Applicant requests that the Department clarify, as it did in the technical corrections for the QPAM exemptions granted at the end of December 2017, that each QPAM may designate its own Compliance Officer. In addition, the Applicant requests that the Department delete the word

"legal" before compliance officer since many senior compliance officers are not lawyers and are not in the legal department of the QPAM.

The Department accepts the Applicant's requests and has revised the exemption accordingly.

Comment 15 - Section II(m) (2) (i)

Section II(m) (2) (i) of the proposed exemption provides:

"With respect to the Exemption Review, the following conditions must be met: (i) The Exemption Review includes a review of the BNP QPAMs' compliance with and effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; the most recent Audit Report issued pursuant to this exemption or PTE 2015-06; any material change in the relevant business activities of the BNP Affiliated QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the BNP Affiliated QPAMs; . . ."

The Applicant states that the term "BNP QPAM" is undefined and, to avoid confusion, should be modified to require "a review of the BNP Affiliated QPAMs' compliance" In addition, the Applicant notes that this provision requires the Compliance Officer's review to encompass "the most recent Audit Report issued pursuant to this exemption or PTE 2015-06." Only one audit report is required under this exemption, and, by the terms of the exemption, the Compliance Officer's review must be completed before the audit report is to be completed. Therefore, the Applicant requests that the Compliance Officer not be required to review the audit report under this exemption but only the most recent audit report under PTE 2015-06.

The Department has modified the term "BNP QPAM" to "BNP Affiliated QPAM." The Department also accepts the Applicant's request regarding the Compliance Officer. The Department concurs agrees that the Compliance Officer's review of the audit report under PTE 2015-06 is sufficient. Accordingly, the Department is revising this exemption to more explicitly state this requirement.

The Department also corrected certain cross-references in Section II(m)(2).

Comment 16 - Section II(p)

Section II(p) of the proposed exemption provides that:
"By November 29, 2018, each BNP Affiliated QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the BNP Affiliated QPAM's written Policies developed in connection with this exemption. With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan."

The Applicant requests that the Department clarify that, in the event Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate. The Department agrees with this comment and has modified Section II(p) accordingly.

Comment 17 - Section II(q)

Section II(q) of the proposed temporary exemption provides that: *"[a] BNP Affiliated QPAM will not fail to meet the terms of this exemption, solely because a different BNP QPAM fails to satisfy a condition for relief described in Sections I(c), (d), (h), (i), (j), (k), (l), (n), or (p);..."*

The Applicant requests that the Department modify Section II(q) by replacing "a different BNP QPAM" with "a different BNP Affiliated QPAM." The Department agrees with this comment and has modified Section II(q), accordingly. Additionally, the Department has re-designated the reference to "Sections I(c), (d), (h), (i), (j), (k), (l), (n), or (p)" found in Section II(q) as "Sections II(c), (d), (h), (i), (j), (k), (l), (n), or (p)."

Comment 18 - Section III(b)

Section III(b) of the proposed exemption defines the term "BNP Affiliated QPAM" to mean: *"BNP Paribas Asset Management USA, Inc.; BNP Paribas Asset Management UK Limited; BNP Paribas Asset Management Singapore Limited; Bank of the West; First Hawaiian Bank; BancWest Investment*

Services, Inc.; and Bishop Street Capital Management Corp., to the extent these entities qualify as a 'qualified professional asset manager' (as defined in Section VI(a) ⁵ of PTE 84-14) and rely on the relief provided by PTE 84-14, and with respect to which BNP Paribas is an 'affiliate' (as defined in Part VI(d) of PTE 84-14). The term 'BNP Affiliated QPAM' excludes BNP Paribas USA, the entity implicated in the criminal conduct that is the subject of the 2018 Conviction, and BNP Paribas, the entity implicated in the 2015 Convictions."

The Applicant requests that the Department modify the definition of "BNP Affiliated QPAM" to mean, "all current and future Affiliated QPAMs, including but not limited to the enumerated entities, and not including the entities expressly excluded." The Department agrees with this comment and has modified Section III(b) accordingly.

5 In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

Comment 19 - Section III(c)

Section III(c) of the proposed temporary exemption defines the term "BNP Related Affiliated QPAM" to mean, *"any future 'qualified professional asset manager' (as defined in section VI(a) of PTE 84-14) that relies on the relief provided by PTE 84-14, and with respect to which BNP Paribas owns a direct or indirect five percent or more interest, but with respect to which BNP Paribas is not an 'affiliate' (as defined in Section VI(d) (1) of PTE 84-14)."*

The Applicant requests that the Department clarify that "BNP Related QPAM" means any "current or future" Related QPAM. The Department agrees with this comment and has modified Section III(c), accordingly.

Comment 20 - Paragraph 13 of the Preamble

The Applicant notes that paragraph 13 of the proposed exemption's preamble provides that the exemption will terminate if there is another conviction or "if any conditions of PTE 84-14 are not met." The Applicant seeks clarification that relief under this exemption will remain available for transactions that meet the terms of this exemption and of PTE 84-14, notwithstanding that a prior

transaction (intended to be covered by this exemption) failed to meet the terms of this exemption.

The Department concurs with the Applicant's clarification. The relief herein does not extend to a particular transaction to the extent, with respect to such transaction, any condition in this exemption or in PTE 84-14 has not been met.

Other Comments

The Applicant seeks certain clarifications to the proposed exemption that the Department does not view as relevant to its determination of whether to grant this exemption. These requested clarifications may be found as part of the public record for Application No. D-11949, in a letter to the Department, dated March 27, 2018.

After giving full consideration to the record, the Department has decided to grant the exemption, as described above. The complete application file (Application No. D-11949) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200

Constitution Avenue N.W., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 22, 2018 at 83 FR 12596.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act;

nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department makes the following determinations: the exemption is administratively feasible, the exemption is in the interests of affected plans and of their participants and beneficiaries, and the exemption is protective of the rights of participants and beneficiaries of such plans;

(3) The exemption is supplemental to, and not in derogation of, any other provisions of ERISA, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transaction which is the

subject of the exemption.

Accordingly, the following exemption is granted under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011):

EXEMPTION

SECTION I. COVERED TRANSACTIONS

Certain entities with specified relationships to BNP Paribas (hereinafter, the BNP Affiliated QPAMs and the BNP Related QPAMs, as defined in Sections III(b) and III(c), respectively) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14 (PTE 84-14 or the QPAM Exemption),⁶ notwithstanding the 2015 Convictions of BNP Paribas (as defined in Section III(d)(1)) and the 2018 Conviction of BNP

⁶ 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430, (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as "PTE 84-14" or the "QPAM Exemption."

Paribas USA, Inc. (as defined in Section III(d)(2)).⁷

SECTION II. CONDITIONS

(a) The BNP Affiliated QPAMs and the BNP Related QPAMs (including their officers, directors, agents other than BNP Paribas and BNP Paribas USA, Inc. (BNP Paribas USA)), and employees of such QPAMs and any other party engaged on behalf of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not know of, did not have reason to know of, or participate in: (1) the criminal conduct of BNP Paribas that is the subject of the 2015 Convictions; or (2) the criminal conduct of BNP Paribas USA that is the subject of the 2018 Conviction (hereinafter, collectively, the BNP Convictions). For purposes of this exemption, "participate in" refers not only to active participation in the misconduct underlying the BNP Convictions, but also to

⁷ Section I(g) of PTE 84-14 generally provides that "[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of" certain criminal activity therein described.

knowing approval of that misconduct, or knowledge of such misconduct without taking active steps to prohibit such conduct, such as reporting the conduct to supervisors, including the Board of Directors.”;

(b) The BNP Affiliated QPAMs and the BNP Related QPAMs (including their officers, directors, agents other than BNP Paribas and BNP Paribas USA, and employees of such QPAMs and any other parties engaged on behalf of such QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the BNP Convictions (the BNP Misconduct);

(c) The BNP Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in the BNP Misconduct;

(d) At all times during the Exemption Period, no BNP Affiliated QPAM will use its authority or influence to direct an “investment fund” (as defined in Section VI(b) of PTE 84-14) that is subject to ERISA or the Code and managed by such BNP Affiliated QPAM with respect to one or more Covered Plans (as defined in Section III(f)) to enter into any transaction with BNP Paribas or BNP Paribas USA or to engage BNP Paribas or BNP Paribas USA to provide any service

to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of the BNP Affiliated QPAMs or the BNP Related QPAMs to satisfy Section I(g) of PTE 84-14 arose solely from the BNP Convictions;

(f) A BNP Affiliated QPAM or a BNP Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: further the criminal conduct that is the subject of the BNP Convictions; or cause the BNP Affiliated QPAM, the BNP Related QPAM, or their affiliates to directly or indirectly profit from the criminal conduct that is the subject of the BNP Convictions;

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, BNP Paribas and BNP Paribas USA will not act as fiduciaries within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered plan and IRA

assets; provided, however, that BNP Paribas or BNP Paribas USA will not be treated as violating the conditions of this exemption solely because it acted as an investment advice fiduciary within the meaning of section 3(21)(A)(ii) of ERISA or section 4975(e)(3)(B) of the Code;

(h)(1) Each BNP Affiliated QPAM must continue to maintain, adjust (to the extent necessary), implement, and follow written policies and procedures (the Policies). The Policies must require, and must be reasonably designed to ensure that:

(i) The asset management decisions of the BNP Affiliated QPAM are conducted independently of the corporate management and business activities of BNP Paribas and BNP Paribas USA. This condition does not preclude a BNP Affiliated QPAM from receiving publicly available research and other widely available information from a BNP Paribas affiliate;

(ii) The BNP Affiliated QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, in each case as applicable with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and

provisions with respect to Covered Plans;

(iii) The BNP Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the BNP Affiliated QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) To the best of the BNP Affiliated QPAM's knowledge at the time, the BNP Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans, or make material misrepresentations or omit material information in its communications with Covered Plans;

(vi) The BNP Affiliated QPAM complies with the terms of this exemption;

(2) Any violation of, or failure to comply with an item in subparagraphs ((h)(1)(ii) through (h)(1)(vi)), is

corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing. Such report shall be made to the head of compliance and the General Counsel (or their functional equivalent) of the relevant BNP Affiliated QPAM that engaged in the violation or failure, and, the independent auditor responsible for reviewing compliance with the Policies, and a fiduciary of any affected Covered Plan where such fiduciary is independent of BNP Paribas. Notwithstanding the foregoing, with respect to any Covered Plan sponsored by an "affiliate" (as defined in Section VI(d) of PTE 84-14) of BNP Paribas or beneficially owned by an employee of BNP or its affiliates, such fiduciary does not need to be independent of BNP Paribas. A BNP Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is

earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(3) Each BNP Affiliated QPAM will maintain, adjust (to the extent necessary) and implement a program of training during the Exemption Period, to be conducted during the Exemption Period, for all relevant BNP Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

(i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; and

(ii) Be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code;

(i) (1) Each BNP Affiliated QPAM submits to an audit conducted by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each BNP Affiliated QPAM's compliance with,

the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The audit must cover the Exemption Period and must be completed no later than six (6) months after the end of the Exemption Period. For time periods ending prior to the Conviction Date and covered by the audit required pursuant to PTE 2015-06,⁸ the audit requirements in Section I(h) of PTE 2015-06 will remain in effect. The final audit under PTE 2015-06 covering the time period from October 15, 2017 until the Conviction Date must be completed within six (6) months of Conviction Date, and the corresponding certified Audit Report must be submitted to the Department no later than 30 days following the completion of such audit;⁹

(2) Within the scope of the audit and to the extent

⁸ 80 FR 20261 (April 15, 2015). PTE 2015-06 is an exemption in respect of Exemption Application D-11863 that permits BNP Affiliated QPAMs to rely on the exemptive relief provided by PTE 84-14, notwithstanding the 2015 Convictions.

⁹ Pursuant to PTE 2015-06, the annual audit periods are from October 15th through October 14th of the following year. The audits are to be completed 6 (six) months after the end of the audit period and the Audit Report submitted to the Department within 30 days after completion. Accordingly, the last full twelve-month audit for the period October 15, 2016 through October 14, 2017 was submitted to the Department on April 30, 2018.

necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney client privilege, each BNP Affiliated QPAM and, if applicable, BNP Paribas, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access is limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each BNP Affiliated QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each BNP Affiliated QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test, for each BNP Affiliated

QPAM, a sample of such QPAM's transactions involving Covered Plans, sufficient in size and nature to afford the auditor a reasonable basis to determine such QPAM's operational compliance with the Policies and Training;

(5) For the audit, on or before the end of the relevant period described in Section II(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to BNP Paribas and the BNP Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor in connection with its examination. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all the BNP Affiliated QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each BNP Affiliated QPAM's Policies and Training; each BNP Affiliated QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective BNP Affiliated QPAM's noncompliance with the written Policies and Training described in Section II(h) above. The BNP Affiliated QPAM must promptly address any noncompliance. The BNP Affiliated QPAM must promptly

address or prepare a written plan of action to address any determination as to the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective BNP Affiliated QPAM. Any action taken or the plan of action to be taken by the respective BNP Affiliated QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to the certification described in Section II(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that a BNP Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a BNP Affiliated QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular BNP Affiliated QPAM has actually implemented, maintained, and followed the Policies

and Training required by this exemption. Furthermore, the auditor must not solely rely on the Exemption Report created by the compliance officer (the Compliance Officer), as described in Section II(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by Section II(i) (3) and (4) above; and

(ii) The adequacy of the Exemption Review described in Section II(m);

(6) The auditor must notify the BNP Affiliated QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to the Audit Report, the General Counsel, or one of the three most senior executives of the line of business engaged in discretionary asset management activities through the BNP Affiliated QPAM with respect to which the Audit Report applies, must certify in writing, under penalties of perjury, that the officer has reviewed the Audit Report and this exemption; that such BNP Affiliated QPAM has addressed, corrected, and remedied any

instance of noncompliance or inadequacy, or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination, that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code. Notwithstanding the above, a BNP Affiliated QPAM will not violate the condition solely because a Plan or IRA refuses to sign an updated investment management agreement;

(8) The Risk Committee of BNP Paribas's Board of Directors is provided a copy of the Audit Report; and a senior executive officer of BNP Paribas must review the Audit Report for each BNP Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed the Audit Report;

(9) Each BNP Affiliated QPAM provides its certified Audit Report, by regular mail to: Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Suite 400, Washington, DC 20210; or by private carrier to: 122 C Street NW, Suite 400, Washington, DC 20001-2109. This delivery

must take place no later than 30 days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, each BNP Affiliated QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Any engagement agreement with an auditor to perform the audit required under the terms of this exemption must be submitted to OED no later than two (2) months after the Conviction Date;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all the work papers created and utilized in connection with the audit, provided such access and inspection is otherwise permitted by law; and

(12) BNP Paribas must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes

between the terminated auditor and BNP;

(j) As of the Conviction Date and throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a BNP Affiliated QPAM and a Covered Plan, the BNP Affiliated QPAM agrees and warrants to Covered Plans:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such ERISA-covered plan and IRA to the extent that section is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from: a BNP Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; or any claim arising out of the failure of such BNP Affiliated QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of

PTE 84-14 other than the BNP Convictions. This condition applies only to actual losses caused by the BNP Affiliated QPAM's violations.

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the BNP Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of such Covered Plan to terminate or withdraw from its arrangement, with the BNP Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the initial effective date of this exemption, the adverse consequences must relate to of a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly

redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors; and

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the BNP Affiliated QPAM for a violation of such agreement's terms. To the extent consistent with Section 410 of ERISA, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of BNP and its affiliates, or damages arising

from acts outside the control of the BNP Affiliated QPAM;

(7) By six months from the Conviction Date, each BNP Affiliated QPAM must provide a notice of its obligations under this Section II(j) to each Covered Plan. For prospective Covered Plans that enter into a written asset or investment management agreement with a BNP Affiliated QPAM on or six months after the Conviction Date, the BNP Affiliated QPAM will agree to its obligations under this Section II(j) in an updated investment management agreement between the BNP Affiliated QPAM and such clients or other written contractual agreement. Notwithstanding the above, a BNP Affiliated QPAM will not violate the condition solely because a Plan or IRA refuses to sign an updated investment management agreement.

(k) By 60 days after the Conviction Date, each BNP Affiliated QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Convictions (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) (collectively, Initial Notice) that the BNP Convictions result in a failure to meet a condition in PTE 84-14, to each sponsor and beneficial owner of a Covered

Plan, or the sponsor of an investment fund in any case where a BNP Affiliated QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests, and to each entity that may be a BNP Related QPAM. Effective as of the date that is 60 days after the Conviction Date, all Covered Plan clients that enter into a written asset or investment management agreement with a BNP Affiliated QPAM after that date must receive a copy of the exemption, the Summary, and the Statement prior to, or contemporaneously with, the Covered Plan's receipt of a written asset management agreement from the BNP Affiliated QPAM. Disclosures may be delivered electronically;

(l) The BNP Affiliated QPAMs must comply with each condition of PTE 84-14, as amended, with the sole exception of the violations of Section I(g) of PTE 84-14 that are attributable to the BNP Convictions;

(m)(1) By six months from the Conviction Date, BNP Paribas designates a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct a review for the Exemption Period (the Exemption Review), to determine

the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of compliance for asset management;

(2) With respect to the Exemption Review, the following conditions must be met:

(i) The Exemption Review includes a review of the BNP Affiliated QPAMs' compliance with and effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; the most recent Audit Report under PTE 2015-06; any material change in the relevant business activities of the BNP Affiliated QPAMs; and any change to ERISA, the Code, or regulations related to

fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the BNP Affiliated QPAMs;

(ii) The Compliance Officer prepares a written report for the Exemption Review (an Exemption Report) that (A) summarizes his or her material activities during the Exemption Period; (B) sets forth any instance of noncompliance discovered during the Exemption Period, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In the Exemption Report, the Compliance Officer must certify in writing that to his or her knowledge: (A) the report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the Exemption Period and

any related correction taken to date have been identified in the Exemption Report; and (D) the BNP Affiliated QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any instances of noncompliance in accordance with Section II(h) above;

(iv) The Exemption Report must be provided to appropriate corporate officers of BNP Paribas and each BNP Affiliated QPAM to which such report relates, and to the head of compliance and the General Counsel (or their functional equivalent) of the relevant BNP Affiliated QPAM; and the report must be made unconditionally available to the independent auditor described in Section II(i) above;

(v) Each Exemption Review, including the Compliance Officer's written Exemption Report, must be completed within three (3) months following the end of the period to which it relates;

(n) Each BNP Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met, for six (6) years following the date of any transaction for which such BNP Affiliated QPAM relies upon the relief in the exemption;

(o) During the Exemption Period, BNP Paribas must: (1)

immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by BNP Paribas or any of its affiliates (as defined in Section VI(d) of PTE 84-14) in connection with conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA; and (2) immediately provide the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement;

(p) By six months from the Conviction Date, each BNP Affiliated QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the BNP Affiliated QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of

the calendar year during which the Policies were changed.¹⁰

With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan; and

(q) A BNP Affiliated QPAM will not fail to meet the terms of this exemption, solely because a different BNP Affiliated QPAM fails to satisfy a condition for relief described in Sections II(c), (d), (h), (i), (j), (k), (l), (n), or (p); or if the independent auditor described in Section II(i) fails a provision of the exemption other than the requirement described in Section II(i)(11), provided that such failure did not result from any actions or inactions of BNP Paribas or its affiliates.

SECTION III. DEFINITIONS

(a)(1) The term "BNP Paribas" means BNP Paribas, S.A., the parent entity, and its subsidiary, BNP Paribas

¹⁰ In the event the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate.

Securities Corp., but does not include any other subsidiaries or other affiliates.

(2) The term "BNP Paribas USA" means BNP Paribas USA, Inc., and includes its New York branch;

(b) The term "BNP Affiliated QPAM" means all current and future affiliated QPAMs including, but not limited to the following enumerated entities, and not including the entities expressly excluded: BNP Paribas Asset Management USA, Inc.; BNP Paribas Asset Management UK Limited; BNP Paribas Asset Management Singapore Limited; Bank of the West; First Hawaiian Bank; BancWest Investment Services, Inc.; and Bishop Street Capital Management Corp., to the extent these entities qualify as a "qualified professional asset manager" (as defined in Section VI(a)**11** of PTE 84-14) and rely on the relief provided by PTE 84-14, and with respect to which BNP Paribas is an "affiliate" (as defined in Part VI(d) of PTE 84-14). The term "BNP Affiliated QPAM"

11 In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

excludes BNP Paribas USA, the entity implicated in the criminal conduct that is the subject of the 2018 Conviction, and BNP Paribas, the entity implicated in the 2015 Convictions.

(c) The term "BNP Related QPAM" means any current or future "qualified professional asset manager" (as defined in section VI(a) of PTE 84-14) that relies on the relief provided by PTE 84-14, and with respect to which BNP Paribas owns a direct or indirect five percent or more interest, but with respect to which BNP Paribas is not an "affiliate" (as defined in Section VI(d)(1) of PTE 84-14).

(d) The term "BNP Convictions" mean the 2015 Convictions against BNP Paribas and the 2018 Conviction against BNP Paribas USA. More specifically:

(1) The "2015 Convictions" refers to the judgments of conviction against BNP Paribas in: (A) case number 14-cr-00460 (LGS) in the United States District Court for the Southern District of New York for conspiracy to commit an offense against the United States in violation of Title 18, United States Code, Section 371, by conspiring to violate the International Emergency Economic Powers Act, codified at Title 50, United States Code, Section 1701 *et seq.*, and

regulations issued thereunder, and the Trading with the Enemy Act, codified at Title 50, United States Code Appendix, Section 1 *et seq.*, and regulations issued thereunder; and (B) case number 2014 NY 051231 in the Supreme Court of the State of New York, County of New York for falsifying business records in the first degree, in violation of Penal Law §175.10, and conspiracy in the fifth degree, in violation of Penal Law §105.05(1).

(2) The term "2018 Conviction" refers to the judgment of conviction against BNP Paribas USA for violation of the Sherman Antitrust Act, 15 U.S.C. § 1, which is scheduled to be entered in the United States District Court for the Southern District of New York (the District Court) (case number 1:18-cr-61-JSR, in connection with BNP Paribas USA for certain foreign exchange misconduct (the FX Misconduct)).

(e) The term "Conviction Date" means the date that a judgment of conviction against BNP Paribas USA is entered by the District Court in connection with the 2018 Conviction;

(f) The term "Covered Plan" means a plan subject to Part 4 of Title I of ERISA (an "ERISA-covered plan") or a plan subject to section 4975 of the Code (an "IRA"), in each

case, with respect to which a BNP Affiliated QPAM relies on PTE 84-14, or with respect to which a BNP Affiliated QPAM (or any BNP Paribas affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the BNP Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

(g) The term "Exemption Period" means one year from the Conviction Date.

(h) The term "Plea Agreement" means the agreement that was entered into on January 19, 2018, as between BNP Paribas USA and the United States Department of Justice, and filed in the District Court, involving the FX Misconduct.

EFFECTIVE DATE: This exemption is effective for one year from the Conviction Date.

Signed at Washington, D.C., this 23 day of May, 2018.

Lyssa Hall
Director of Exemption
Determinations
Employee Benefits Security
Administration
U.S. DEPARTMENT OF LABOR

[FR Doc. 2018-11473 Filed: 5/29/2018 8:45 am; Publication Date: 5/30/2018]